

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACK REESE, FRANCES ELAINE PIDDE,
JAMES CICHANOWSKY, ROGER MILLER, and
GEORGE NOWLIN,

Plaintiffs,

V.

CNH GLOBAL N.V. and CNH AMERICA LLC,

Defendants.

Case 2:04-cv-70592-PJD-PJK

Hon. Patrick J. Duggan, U.S.D.J.

Hon. Paul J. Komives, U.S. Mag. J.

**DEFENDANTS' MOTION FOR APPROVAL OF
SUPERSEDEAS BOND AND STAY PENDING APPEAL**

Defendants CNH Global N.V. and CNH America LLC seek to appeal the Court's March 3, 2011, decision to award Plaintiffs attorneys' fees and costs. (R. 304, Op. & Order 23–24, 25.) To have enforcement of this decision stayed during the pendency of the appeal, Defendants request that the Court approve the proposed supersedeas bond (a copy of which is submitted herewith as Exhibit 1), and specifically approve both the amount of the proposed bond and the sufficiency of the proposed surety. By the approving the bond, the Court will grant Defendants a stay pursuant to Federal Rule of Civil Procedure 62(d).

The proposed bond of \$1,852,973.55 is 1.25 times the principal amount of the attorneys' fees and costs awarded by the Court in the aforementioned decision. The bond, therefore, would fully compensate Plaintiffs for the full principal amount, plus any post-judgment interest that may accrue on the judgment during the appeal, in the event that Plaintiffs prevail. The proposed surety is qualified under 31 U.S.C. § 9301 *et seq.*, and has been justified under oath. Indeed, the

Court approved a materially identical bond in connection with Defendants' previous appeal to the Sixth Circuit. (R. 246, Stip. Order 2.)

In accordance with Eastern District of Michigan Rule of Civil Procedure 7.1(a), on March 16, 2011, counsel for Defendants sought Plaintiffs' consent to the relief sought in this motion, explaining its legal and factual basis. As of the motion's filing, Plaintiffs have not responded to Defendants' counsel's request.

Dated: 3/22/2011

Respectfully submitted,

s/ with consent of Bobby R. Burchfield
(bburchfield@mwe.com)
Joshua David Rogaczewski
(jrogaczewski@mwe.com)
McDermott Will & Emery LLP
600 13th Street, Northwest
Washington, D.C. 20005
Telephone: 202.756.8000
Facsimile: 202.756.8087

s/ Norman C. Ankers
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226
Telephone: 313.465.7306
Facsimile: 313.465.8307
nankers@honigman.com
(P30533)

Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACK REESE, FRANCES ELAINE PIDDE,
JAMES CICHANOWSKY, ROGER MILLER, and
GEORGE NOWLIN,

Plaintiffs,

V.

CNH GLOBAL N.V. and CNH AMERICA LLC,

Defendants.

Case 2:04-cv-70592-PJD-PJK

Hon. Patrick J. Duggan, U.S.D.J.

Hon. Paul J. Komives, U.S. Mag. J.

**BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR
APPROVAL OF SUPERSEDEAS BOND AND STAY PENDING APPEAL**

Bobby R. Burchfield (bburchfield@mwe.com)
Joshua David Rogaczewski
(jrogaczewski@mwe.com)
McDermott Will & Emery LLP
600 13th Street Northwest
Washington, D.C. 20005
Telephone: 202.756.8000
Facsimile: 202.756.8087

Norman C. Ankers (Mich. Bar. No. P30533)
(nankers@honigman.com)
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226
Telephone: 313.465.7306
Facsimile: 313.465.7307

Attorneys for Defendants

CONCISE STATEMENT OF THE ISSUE PRESENTED

Are Defendants—having procured a supersedeas bond in the amount of 1.25 times the award of attorneys' fees and costs—entitled to a stay pending appeal of the award?

**CONTROLLING OR MOST
APPROPRIATE AUTHORITY FOR THE RELIEF SOUGHT**

Federal Rule of Civil Procedure 62

The Court granted Plaintiffs' motion for attorneys' fees against Defendants CNH Global N.V. and CNH America LLC on March 3, 2011. (R. 304, Op. & Order 23–24, 25.) Defendants seek to appeal this ruling and have it stayed during the pendency of the appeal. Defendants have already filed their notice of appeal with this Court and are entitled to a stay pending appeal under the Federal Rule of Civil Procedure 62(d) as soon as this Court approves a supersedeas bond. Accordingly, Defendants request that the Court approve the proposed supersedeas bond, a copy of which is attached hereto as Exhibit 1, and specifically approve the amount of the proposed bond and the sufficiency of the proposed surety, thereby granting Defendants a stay pursuant to Rule 62(d).

The Court approved a materially identical bond in connection with Defendants' previous appeal to the Sixth Circuit. (R. 246, Stip. Order 2.) The proposed bond should be similarly approved because it meets the two necessary criteria. *First*, it is in an amount that provides more than adequate security for the other parties in this action if the appeal is not successful. Specifically, the bond is in the amount of \$1,852,973.55, which is 1.25 times the principal amount of the attorneys' fees and costs awarded in this action. The bond would fully compensate Plaintiffs for the full principal amount of their award, plus any post-judgment interest that may accrue on the judgment during the appeal, in the event that Plaintiffs prevail on appeal. *Second*, the proposed bond is signed by Travelers Casualty and Surety Company of America, which is duly qualified to serve as a surety under 31 U.S.C. § 9301 *et seq.* The surety has been justified under oath, as shown on the face of the proposed bond.

For the foregoing reasons, Defendants request that the court approve the proposed supersedeas bond, and specifically approve the amount of the proposed bond and the sufficiency

of the proposed surety, thereby granting Defendants a stay pending appeal pursuant to Federal Rule of Civil Procedure 62(d).

Dated: 3/22/2011

Respectfully submitted,

s/ with consent of Bobby R. Burchfield

(bburchfield@mwe.com)

Joshua David Rogaczewski

(jrogaczewski@mwe.com)

McDermott Will & Emery LLP

600 13th Street, Northwest

Washington, D.C. 20005

Telephone: 202.756.8000

Facsimile: 202.756.8087

s/ Norman C. Ankers

Honigman Miller Schwartz and Cohn LLP

2290 First National Building

660 Woodward Avenue

Detroit, Michigan 48226

Telephone: 313.465.7306

Facsimile: 313.465.8307

nankers@honigman.com

(P30533)

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on 3/22/2011, I electronically filed the foregoing paper(s) with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF participants.

s/ Norman C. Ankers
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226
313.465.7306
nankers@honigman.com
(P30533)